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Kenneth E. Flick

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07/15/2008

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KENNETH E. FLICK

Appeal 2007-3184
Application 10/648,931
Technology Center 2600

Decided: July 11, 2008

Before KENNETH W. HAIRSTON, ROBERT E. NAPPI,
and KARL D. EASTHOM, *Administrative Patent Judges*.

EASTHOM, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

STATEMENT OF CASE

Appellant requests a rehearing pursuant to 37 C.F.R. § 41.52 of our Decision on Appeal (“Decision”) of February 14, 2008 setting forth a new grounds of rejection of claims 1, 17, and 23.

We deny the request in so far as it seeks a modification of our decision for the reasons that follow.

Appellant’s arguments regarding claims 1, 17, and 23 are directed to claims 1 and 23. We choose claim 23 as representative of the group.

ANALYSIS

Appellant states that “the claimed invention advantageously permits pre-warn features to be installed into a vehicle without replacing the existing vehicle security system.” (Reh’g. 2). Appellant also states that the “claimed invention provides an emulated pre-warn indication different from an existing alarm indication without modifying the existing alarm system indicator.” (*Id.*). Inexplicably, Appellant also recites several claim 4 features, and states: “In other words, the pre-warn emulator utilizes the common disarm/arm chirping of factory alarm and keyless entry systems to provide a pre-warn indication.” (Reh’g. 3). Appellant concludes: “None of the cited prior art reference discloses or fairly suggests *this above highlighted* feature of the claims. (*Id.*) (emphasis added).”

First, claim 4 is not at issue before us since we entered no such rejection. Second, Appellant’s assertions that the claims require certain features related to claim 4 (or any other unclaimed features), do not distinguish the claims before us from the references, and, thus, do not constitute an argument for patentability. Without an argument for patentability, we have no basis upon which to modify our decision. We also decline Appellant’s implied invitation to read any of the underlined features above into the claims, because they are not claimed.

Next, Appellant

submits that the Board’s proposed combination fails to teach a pre-warn emulator for generating at least one signal on the vehicle data communications bus extending throughout the vehicle and carrying data and address information responsive to said pre-warn vehicle security sensor so that the alarm controller causes the alert indicator to generate an emulated pre-

warn indication different from the alarm indication, as recited by Claim 1, for example.

(Reh’g. 4).

We disagree. The combination as outlined teaches the claimed limitations (*see* Decision 14-17). Moreover, the above statement does not constitute an argument for patentability, as it points to no specific error in our Decision. Nonetheless, we repeat a portion of our Decision as to Hwang’407:

... Hwang’s ‘407 pre-warn emulator 102 is ‘for generating at least one signal’ on Hwang’s ‘407 *outputs lines* which carry data *responsive* to the pre-warn security sensor of the alarm controller 103 - which controller ‘causes the alert indicator’ : i.e., the siren circuit 105, flashing circuit 106, and dome light control circuit 108, ‘to generate an emulated pre-warn indication different from the alarm indication.’ (Hwang’407, Fig. 1). The claim requires the bus to carry data and address information to be ‘responsive’ to the pre-warn security sensor. Hwang’s ‘407 motion detector - the pre-warn sensor - inputs a signal to the pre-warn emulator 102 - causing the *output lines* to carry data responsive to the motion detector via the alarm circuit 103.

(Decision 15) (underlined emphasis added).

Hwang discloses low level pre-warn alarms (“chirp”, preset time period flashing light) and high level alarms (“normal audible,” flashing light and dome light) as initiated by the “puppet master” (Reh’g. 5) pre-warn emulator (one shot timer 102) sending respective different numbers of activation signals and thereby “pulling the ‘strings’” (*id.*) of the controller (main control alarm circuit 103), as dictated by inputs from the pre-warn

sensor (motion detector). (Hwang ‘407, abstract, col. 1, l. 60 to col. 2, l. 14, Fig. 1).

While Appellant acknowledges that Hwang ‘407 teaches much of what we describe above (*see* Reh’g 3), Appellant maintains:

Nonetheless, Appellant has not claimed such an invention but has differently claimed a pre-warn emulator generating signals on this data communications bus so that the alarm controller causes the alert indicator to generate an emulated pre-warn indication different from the alarm indication.

(Reh’g 6).

However, Appellant’s assertions of what the claims require, including the “puppet master” analogy (Reh’g. 5) addressed above, fail to demonstrate why Hwang ‘407, or the combination of Hwang ‘407 with Flick or Leen, does not teach what is alleged to be missing.¹

¹We also alternatively noted in our Decision the following:

We also determine that Flick teaches every claim limitation except for the explicit disclosure of generating an *emulated pre-warn indication different from the alarm indication*. It appears to us that one of ordinary skill may have understood that Flick’s “pre-warn input” 26 would cause a lesser (i.e., pre-warn) indication to be generated as compared to a full-blown (i.e., alarm) indication, but we leave this determination to the Examiner. Regardless, Hwang ‘407 explicitly teaches the limitation. Hence, the order of references could have been reversed to meet the claim.

(Decision n. 5).

Flick’s alarm controller 11 receives a pre-warn input 26 (Fig. 1), with several levels of output alarm indication (i.e., “STARTER KILL,” “SIRENS/LIGHTS,” “DOME LIGHT,” and “SPEECH MESSAGE,” etc.).

Similarly, Appellant's statement that Flick's or Leen's bus requires a substantial modification (Reh'g. 5) not only lacks any evidence or argument in support thereof, but shifts the focus away from our Decision that Hwang '407 teaches the claimed alarm control features while Leen or Flick teaches the claimed bus features, thereby rendering a predictable bus/alarm combination and meeting the claims. For example, we noted that Flick teaches,

connecting alarm indicators 64, vehicle sensors 60 and an alarm controller 65 to a bus. . . . [and] teaches several advantages of connecting a vehicle alarm system to a data bus communicating with devices throughout a vehicle, so that replacing Hwang's '407 wiring would have been obvious in order to reduce complications, weight, and cost, etc.

(Decision 16).

Appellant also states that "the Board is mischaracterizing the claimed invention by grossly oversimplifying the claimed invention by equating it to Hwang '407 plus a data communications bus." (Reh'g. 5). Appellant fails to demonstrate why "Hwang '407 plus a data communications bus" does not meet the claim. If Appellant's additional assertions (*see* Reh'g. 5 – emphasizing "alarm controller") are meant to constitute implied arguments that Hwang's '407 alarm circuit does not constitute an alarm controller and that Flick's or Leen's data bus does not carry data and address information from the alarm controller, the argument is without merit. The substitution of

(*See* Flick, Fig. 1). Appellant fails to put forth a supported argument convincing us of error in our determination that Flick discloses or suggests the claimed invention.

Flick's controller 65 and bus (or Leen's – *see eg.* last par., p. 88: “controller area network” - “CAN is currently the most widely used vehicular network. . .”) for Hwang's 407 control circuit and point-to-point wiring system involves the mere substitution of known elements, yielding the predictable result of a compact controller addressing numerous alarm indicators on one common data bus rather than a circuit addressing myriad numbers of devices wired point-to-point (*see* Decision 15-17). Additionally, such a combination requires either of Flick's or Leen's data buses to carry bus and address information generated in Hwang's '407, Flick's, or Leen's alarm controller (*see* Decision 17) in the manner as set forth in the claim. (*See also* our discussion below, noting that the method claim, calling for “upgrading,” does not preclude replacing existing parts.)

Appellant also submits that the Board “overlooked a clear teaching away from swapping out the output lines of Hwang '407 for the data communications bus of Flick '551 or Leen et al.” (Reh'g. 6). Appellant bases this submission on the unsupported assertions that bus and address information is proprietary to vehicle manufacturers, so that a person “upgrading a vehicle security system” as set forth in claim 23 would have to “decode and reverse engineer the data and address information carried by the data communication bus” which amounts to a “tedious, onerous, and substantial task.” (Reh'g. 6-7).

Even if the unsupported assertions were correct, we would not be persuaded by the argument because the claim does not require such proprietary information. For example, a person of ordinary skill could either be employed by an owner of such proprietary information or otherwise

obtain or produce it by purchase, design, etc., and as such, have nothing to reverse engineer in the manner argued.

“Fortunately, today’s control and communications networks, based on serial protocols, counter the problems of large amounts of discrete wiring.” (Leen, 88). In other words, even if reverse engineering is required, replacing point-to-point wiring harnesses with bus network systems “reduces weight, costs, and complexity, and saves space and fuel consumption” (Decision 15), yielding predictable benefits which outweigh any reverse engineering problems argued to exist.

Alternatively, claim 23 does not preclude replacing an existing alarm controller with a completely new or different one, including one such as Flick’s (compatible with many vehicles (col. 3, ll. 5-27)) or Leen’s (CAN - controller area network - “one of the first and most enduring automotive control networks,” Leen, last par., p. 88), thereby eliminating any reverse engineering required, while still obtaining the predictable benefits outlined above. Nor does claim 23, calling for “upgrading,” preclude replacing other nonfunctioning, non-compatible, or older parts, including an existing pre-warn emulator and/or sensor, and interfacing same with a new or existing controller, thereby meeting the claim. Such a modification of Hwang’ 407 and Flick or Leen would have involved a common sense maintenance and replacement of parts, yielding the predictable result of reliability.

Appellant also asserts that our stated motivation to combine Hwan, with Flick or Leen was improper as “a conclusory statement of obviousness.” (Reh’g. 7). We disagree. Our findings were carefully articulated (Decision 15-17).

DECISION

The Request for Rehearing to the extent of a modification of our decision is denied.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

REHEARING

DENIED

gvw

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